



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 15, 2005

Mr. Dan Meador  
Assistant General Counsel  
Texas Department of State Health Services  
1100 W. 49<sup>th</sup> Street  
Austin, Texas 78756

OR2005-05262

Dear Mr. Meador:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 226079.

The Texas Board of Social Worker Examiners (the "board") received a request for the files of two licensed social workers.<sup>1</sup> You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the board has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling interest to withhold the information. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381.

A compelling reason for withholding information is demonstrated where information is made confidential by other law or where third party interests are at issue. Open Records Decision

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<sup>1</sup>The Texas Department of State Health Services (the "department") briefed on behalf of the board.

No. 150 (1977). In this instance, because you contend that portions of the submitted information are made confidential by other law, we will consider your arguments for non-disclosure.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses confidentiality provisions such as section 505.2545 of the Occupations Code, which provides in pertinent part:

(h) All information and materials subpoenaed or compiled by the [Texas State Board of Social Worker Examiners] in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in discipline of the holder of a license or order of recognition, except that this information may be disclosed to:

- (1) persons involved with the board in a disciplinary action against the holder of a license or order of recognition;
- (2) social work licensing or disciplinary boards in other jurisdictions;
- (3) peer assistance programs approved by the board under Chapter 467, Health and Safety Code;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(i) The filing of formal charges by the board against a holder of a license or order of recognition, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with [the Act].

Occ. Code § 505.2545(h), (i). You indicate, and the submitted stapled information reflects, that the information at issue was compiled by the Texas State Board of Social Worker Examiners (the "board"), which is a part of the department's Professional Licensing and Certification Unit, in connection with the board's investigation of a complaint against one of the named licensed social workers. You further state that none of the exceptions to confidentiality under section 505.2545(h) are applicable in this instance, and that none of the

submitted information is subject to release under section 505.2545(i). On the basis of your representations and our review of the submitted information, we therefore conclude that the submitted stapled information is made confidential in its entirety pursuant to section 505.2545(h) of the Occupations Code. The board therefore must withhold the submitted stapled information pursuant to section 552.101 of the Government Code.<sup>2</sup>

We will now address your arguments for the remaining information. Section 58.001 of the Occupations Code provides as follows:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 58.001.<sup>3</sup> Accordingly, we find that the licensees' social security numbers, which you have marked, are confidential under section 58.001 of the Occupations Code and thus must be withheld from disclosure under section 552.101 of the Government Code.

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. You must withhold the Texas driver's license numbers that you have marked under section 552.130.

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<sup>2</sup>As our ruling on this information is dispositive, we need not address your argument under section 110.256 of the Occupations Code.

<sup>3</sup>As of the date of this letter ruling, two different sections of the Occupations Code are denominated as section 58.001. The section relating to "[t]he social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession" was renumbered from section 56.001 of the Occupations Code to section 58.001 of the Occupations Code by the Act of May 20, 2003, 78th Leg., R.S., ch. 1275, § 2(112), 2003 Tex. Gen. Laws 4140, 4146.

In summary, you must withhold the stapled and marked information under section 552.101 in conjunction with section 505.2545(h) of the Occupations Code. You must withhold the marked social security numbers under section 552.101 in conjunction with section 58.001 of the Occupations Code. You must withhold the marked Texas driver's license numbers under section 552.130. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elizabeth A. Stephens', written in a cursive style.

Elizabeth A. Stephens  
Assistant Attorney General  
Open Records Division

EAS/krl

Ref: ID#226079

Enc. Submitted documents

c: Ms. Sandra Johnston  
251 Pin Oak Drive  
Brenham, TX 77833  
(w/o enclosures)